

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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LEONIS FRANKLIN,

Docket No. 07 CV 8590

Plaintiff,

-against-

FUJITEC SERGE OF NY and "JOHN DOE",  
A FICTITIOUS NAME FOR A FOREMAN  
EMPLOYED BY FUJITEC SERGE OF NY,

PETITION FOR  
REMOVAL

Defendants.

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To: The Honorable Judges of the United States District Court  
for the Southern District of New York

Defendant FUJITEC AMERICA, INC., incorrectly sued herein as above (hereinafter  
"FAI"), by its attorney, GERALD NEAL SWARTZ, respectfully shows as follows:

1. Upon information and belief, on or about September 5, 2007, a copy of the summons and complaint in this action was received by FAI outside the state, with respect to an action purportedly venued in the Supreme Court of the State of New York, County of Bronx, entitled "*Leonis Franklin, Plaintiff, against Fujitec Serge of NY and 'John Doe', a Fictitious Name for a Foreman Employed by Fujitec Serge of NY, defendants*". A copy of the summons and complaint is annexed hereto as Exhibit "A".

2. The above described civil action is brought in a state court, and is a civil action over which this Court has original jurisdiction under 28 U.S.C. §1332, and which may be removed to this Court by FAI, pursuant to the provisions of 28 U.S.C. §1441, in that it is a civil action, between citizens of different states, wherein the matter in controversy allegedly exceeds the sum of \$75,000, exclusive of interest and costs.

3. According to the summons and complaint, the plaintiff is an individual residing in the State of New Jersey, and upon information and belief, he is a citizen of the State of New Jersey.

4. Defendant FAI is a corporation, which is incorporated under the laws of the State of Delaware, having its principal place of business at 401 Fujitec Drive, Lebanon, Ohio 45036.

5. The Plaintiff alleges in his complaint that on or about July 11, 2006, while he was law fully and properly upon a certain premises, he was maliciously assaulted, beaten, pushed and shoved, as well as violently thrown down to the ground causing him personal injury, allegedly without just cause or provocation.

6. The claim purportedly stated by the plaintiff in his complaint against FAI is for alleged battery.

7. Written notice of the filing of this petition will be given to the attorney for the plaintiff, as required by law.

8. A true copy of this petition will be filed with the Clerk of the Supreme Court of the State of New York, County of Bronx, as provided by law.

WHEREFORE, FAI prays that the above action pending against it in the Supreme Court of the State of New York, County of Bronx, be removed therefrom to this Court.

Dated: New York, N. Y.  
October 3, 2007

/S/  
GERALD NEAL SWARTZ (GNS-1389)  
Attorney for deft. Fujitec America, Inc.  
475 Park Avenue South, 8<sup>TH</sup> floor  
New York, N.Y. 10016  
Tel. (212) 725-7070

cc:

Steven Siegel, Esq.  
STEVEN SIEGEL, P. C.  
Attorneys for plaintiff  
123-12 82<sup>ND</sup> Avenue  
Kew Gardens, N. Y. 11415

Tel. 718-520-0413

UNITED STATES DISTRICT COURT  
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RJS/DF

ECF

AFFIDAVIT  
OF SERVICE

STATE OF NEW YORK     )  
                                  ) ss.:  
COUNTY OF NEW YORK )

MANUEL AYRES, being duly sworn, deposes and says: I am not a party to this action, am over 18 years of age, and reside in Springfield, N. J.

That on October 3, 2007 deponent served the within  
PETITION FOR REMOVAL

upon:

Steven Siegel, Esq.  
STEVEN SIEGEL, P. C.  
Attorneys for plaintiff  
123-12 82<sup>ND</sup> Avenue  
Kew Gardens, N. Y. 11415

Tel. 718-520-0413

by depositing a true copy of same enclosed in a postage paid envelope addressed to said counsel at said address, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

/S/

\_\_\_\_\_  
MANUEL AYRES

Sworn to before me, this  
3<sup>RD</sup> day of October, 2007

/S/

\_\_\_\_\_  
Gerald Neal Swartz  
Notary Public, State of New York  
No. 02 SW 4685686  
Qualified in Westchester County  
Commission Expires April 30, 2010

**Docket No. 07 Cv**

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**PETITION FOR REMOVAL**

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**GERALD NEAL SWARTZ**

Atty for deft Fujitec America, Inc.

sued herein as above

Office and Post Office Address:  
475 Park Avenue South, 8<sup>TH</sup> Floor  
New York, N. Y. 10016  
Tel. (212) 725-7070